

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 10, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMY B.,¹

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of
Social Security,²

Defendant.

No. 1:23-cv-03154-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

² Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, and section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), he is hereby substituted for Kilolo Kijakazi as the defendant.

1 Due to post-traumatic stress disorder, chronic migraine without aura,
2 chronic neck pain, panic disorder, exertional compartment syndrome in the lower
3 legs, asthma, obesity, and Ehlers-Danlos syndrome, Plaintiff Amy B. claims she is
4 unable to work fulltime and applied for disability insurance benefits. She appeals
5 the denial of benefits by the Administrative Law Judge (ALJ) on the grounds that
6 the ALJ improperly assessed Plaintiff's credibility, improperly evaluated the
7 medical opinion evidence, and erred at step five as a result of her prior errors. As is
8 explained below, the ALJ erred considering Plaintiff's credibility as to her migraine
9 headaches and erred in evaluating the medical opinions of Anusha Mannava, MD.
10 This matter is remanded for further proceedings.

11 **I. Background**

12 In May 2019, Plaintiff filed application for benefits under Title 2, claiming
13 disability beginning May 1, 2019, based on the physical and mental impairments
14 noted above.³

15 After the agency denied Plaintiff benefits, ALJ Debra Denney held a telephone
16 hearing in June 2022 at which Plaintiff appeared with her representative.⁴ Plaintiff
17 and a vocational expert testified.⁵

20 ³ AR 259, 353.

21 ⁴ AR 77-110.

22 ⁵ *Id.*

1 After the hearing, the ALJ issued a decision denying benefits.⁶ The ALJ
2 found Plaintiff's alleged symptoms were not entirely consistent with the medical
3 evidence and the other evidence.⁷ As to medical opinions, the ALJ found:

- 4 • The opinions of state agency evaluator Bruce Eather, PhD, to be
5 persuasive.
- 6 • The opinions of state agency evaluator Howard Platter, MD, to be
7 persuasive.
- 8 • The opinions of consultative examiner Lisa Kisenwether, ARNP, to be
9 partially persuasive.
- 10 • The opinions of consultative examiner Emma Billings, PhD, to be
11 partially persuasive.
- 12 • The opinions of treating neurologist Anusha Mannava, MD, to be
13 generally unpersuasive.
- 14 • The opinions of treating physician Charles Bulfinch, DO, to be
15 generally unpersuasive.
- 16 • The opinions of treating therapist Martha Burns, LMFT, to be
17 generally unpersuasive.⁸

18
19 ⁶ AR 15-43. Per 20 C.F.R. § 404.1520(a)–(g), a five-step evaluation determines
20 whether a claimant is disabled.

21 ⁷ AR 26-35.

22 ⁸ AR 33-35.

1 The ALJ also found the third-party statement of Plaintiff's fiancé, William Leitzel,
2 to be less persuasive than the medical opinions.⁹

3 As to the sequential disability analysis, the ALJ found:

- 4 • Plaintiff met the insured status requirements through December 31,
5 2024.
- 6 • Step one: Plaintiff had not engaged in substantial gainful activity
7 since May 1, 2019, the alleged onset date.
- 8 • Step two: Plaintiff had the following medically determinable severe
9 impairments: migraines, asthma, Ehlers-Danlos syndrome, obesity,
10 depression, and anxiety.
- 11 • Step three: Plaintiff did not have an impairment or combination of
12 impairments that met or medically equaled the severity of one of the
13 listed impairments.
- 14 • RFC: Plaintiff had the RFC to perform a full range of sedentary work
15 with the following exceptions:

16 [Plaintiff] can lift twenty pounds occasionally and ten pounds
17 frequently; can stand, walk, and sit all six hours in an eight-
18 hour day, with normal breaks; should avoid concentrated
19 exposure to cold, heat, and humidity; no more than occasional
20 exposure to fumes, dusts, odors, unprotected heights, and fast
21 moving machinery; no work on ladders, ropes, or scaffolds; can
22 maintain concentration, persistence, and pace for two hours
23 before needing a break; needs a quiet, characterized as office
level, noise environment; can tolerate brief, occasional
interactions with coworkers and supervisors and no more than

22 ⁹ AR 35.

very brief to no interaction with the public; should not be assigned teamwork; can tolerate routine changes; and can avoid workplace hazards to complete a normal workday.

- Step four: Plaintiff is unable to perform past relevant work of a telemarketer, reservations agent, customer service supervisor, and sales director.
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as a routing clerk (DOT # 222.687-022), and a silver wrapper (DOT # 318.687-018).¹⁰

Plaintiff timely requested review of the ALJ's decision by the Appeals Council and now this Court.¹¹

II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error,"¹² and such error impacted the nondisability determination.¹³ Substantial evidence is "more than a mere scintilla but less than a

¹⁰ AR 20-37.

¹¹ AR 257.

¹² *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. §§ 405(g), 1383(g).

¹³ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)), *superseded on other grounds by* 20 C.F.R. § 404.1520(a) (recognizing that the court may not reverse an

preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁴

III. Analysis

Plaintiff seeks relief from the denial of disability on three grounds. She argues the ALJ erred when evaluating Plaintiff’s subjective complaints, erred when evaluating the medical opinion evidence, and erred at step five as a result of the prior two errors. The Commissioner argues that the ALJ reasonably discounted Plaintiff’s subjective complaints, properly evaluated the opinions of the treating sources pursuant to the new regulations, and properly relied on vocational expert testimony at step five.¹⁵ The Court disagrees with the Commissioner as to the ALJ’s consideration of Plaintiff’s subjective complaints regarding her migraine

ALJ decision due to a harmless error—one that “is inconsequential to the ultimate nondisability determination”).

¹⁴ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). *See also Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion,” not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does not indicate that such evidence was not considered[.]”).

¹⁵ ECF No. 12.

1 headaches and the ALJ's consideration of Dr. Mannava's opinions. As is explained
2 below, the ALJ's analysis contains consequential error as to these two issues.

3 **A. Symptom Reports: Plaintiff establishes consequential error.**

4 Plaintiff argues the ALJ failed to provide valid reasons for discounting
5 symptom reports and testimony that her impairments of migraine headaches and
6 Ehlers-Danlos syndrome made it difficult for her to engage in any physical activity.
7 The ALJ offered several reasons for discounting Plaintiff's symptom reports—each
8 reason is addressed below.

9 1. Standard

10 The ALJ must identify what symptom claims are being discounted and
11 clearly and convincingly explain the rationale for discounting the symptoms with
12 supporting citation to evidence.¹⁶ This requires the ALJ to “show his [or her] work”

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¹⁶ *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022). Factors to be considered by
15 the ALJ when evaluating the intensity, persistence, and limiting effects of a
16 claimant's symptoms include: 1) daily activities; 2) the location, duration,
17 frequency, and intensity of pain or other symptoms; 3) factors that precipitate and
18 aggravate the symptoms; 4) the type, dosage, effectiveness, and side effects of any
19 medication the claimant takes or has taken to alleviate pain or other symptoms; 5)
20 treatment, other than medication, the claimant receives or has received for relief of
21 pain or other symptoms; 6) any non-treatment measures the claimant uses or has
22 used to relieve pain or other symptoms; and 7) any other factors concerning the
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1 and provide a “rationale . . . clear enough that it has the power to convince” the
 2 reviewing court.¹⁷

3 When examining a claimant’s symptoms, the ALJ utilizes a two-step inquiry.
 4 “First, the ALJ must determine whether there is objective medical evidence of an
 5 underlying impairment which could reasonably be expected to produce the pain or
 6 other symptoms alleged.”¹⁸ Second, “[i]f the claimant meets the first test and there
 7 is no evidence of malingering, the ALJ can only reject the claimant’s testimony
 8 about the severity of the symptoms if [the ALJ] gives ‘specific, clear and convincing
 9 reasons’ for the rejection.”¹⁹ General findings are insufficient; rather, the ALJ must
 10 identify what symptom claims are being discounted and what evidence undermines
 11 these claims.²⁰ “The clear and convincing standard is the most demanding required
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14 claimant’s functional limitations and restrictions due to pain or other symptoms.
 15 Soc. Sec. Rlg. 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. § 404.1529(c); *Ghanim v.*
 16 *Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014).

17 ¹⁷ *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (alteration added).

18 ¹⁸ *Molina*, 674 F.3d at 1112.

19 ¹⁹ *Ghanim* 763 F.3d at 1163(quoted *Lingenfelter*, 504 F.3d at 1036).

20 ²⁰ *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), and *Thomas v.*
 21 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
 22 explain why he discounted claimant’s symptom claims)).
 23

1 in Social Security cases.”²¹ Therefore, if an ALJ does not articulate specific, clear,
 2 and convincing reasons to reject a claimant’s symptoms, the corresponding
 3 limitations must be included in the RFC.²²

4 2. Plaintiff’s Testimony

5 On June 14, 2022, Plaintiff appeared with her attorney for a hearing before
 6 ALJ Debra Denney.²³ Plaintiff testified and a vocational expert testified.²⁴ Plaintiff
 7 testified that she lived with her fiancé and he was the sole income for their
 8 household.²⁵ She said that she could not work primarily because of migraine
 9 headaches.²⁶ She said they are easily triggered and she cannot maintain
 10 friendships and hold conversations because of the migraines.²⁷ She has double
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12 ²¹ *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
 13 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

14 ²² *Lingenfelter*, 504 F.3d at 1035 (“[T]he ALJ failed to provide clear and convincing
 15 reasons for finding Lingenfelter’s alleged pain and symptoms not credible, and
 16 therefore was required to include these limitations in his assessment of
 17 Lingenfelter’s RFC.”).

18 ²³ AR 77-110.

19 ²⁴ *Id.*

20 ²⁵ AR 84.

21 ²⁶ AR 85.

22 ²⁷ *Id.*

1 vision so reading triggers migraines, but they are also triggered by smells, sounds,
2 and lighting.²⁸ She has Ehlers-Danlos, which causes problems in her joints as
3 well.²⁹ She said that Dr. Bulfinch believes that Ehlers-Danlos is a definite
4 diagnosis based on information from a local genetics program.³⁰ She can drive
5 within a five mile radius.³¹

6 Plaintiff testified that from 2006 through 2016 she worked from home for
7 Royal Caribbean call center.³² They gave her an office with climate control, special
8 lighting, the ability to attend meetings remotely, and flexibility in her schedule.³³
9 When at Royal Caribbean, she was a director and managed managers.³⁴ She left
10 and took a job with less responsibility thinking that it might alleviate her migraine
11 headaches, but she was fired in less than 90 days because they did not offer
12 accommodations.³⁵ She kept falling asleep in meetings and when driving and left
13 for safety reasons and briefly worked in a pet store and later as a self-employed dog
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15 ²⁸ *Id.*

16 ²⁹ *Id.*

17 ³⁰ AR 86.

18 ³¹ *Id.*

19 ³² *Id.*

20 ³³ *Id.*

21 ³⁴ AR 87.

22 ³⁵ *Id.*

1 walker and pet sitter.³⁶ She then worked for a hotel supply company but left after a
2 year because she could not hustle and made only one sale.³⁷ She received
3 unemployment during the pandemic on the advice of a counselor.³⁸ When she
4 applied for unemployment, she certified that she was able to work and applied for
5 jobs and attended about 6 job interviews in 2021.³⁹ None of the interviewers offered
6 her a job after she told them she needed accommodations.⁴⁰

7 Plaintiff said she sees Dr. Bulfinch every four months for Ehlers-Danlos and
8 that he is mainly monitoring her condition and prescribing medication.⁴¹ She also
9 sees Dr. Mannava for her migraine headaches.⁴² She said mostly she is treated by
10 Dr. Mannava with medication and recently had a brain MRI which showed
11 idiopathic intracranial hypertension, so she would be given a new medication.⁴³
12 She has not been given Botox injections due to a phobia of needles.⁴⁴ She said that
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14 ³⁶ AR 88.

15 ³⁷ AR 89.

16 ³⁸ *Id.*

17 ³⁹ AR 90.

18 ⁴⁰ AR 91.

19 ⁴¹ *Id.*

20 ⁴² *Id.*

21 ⁴³ AR 92.

22 ⁴⁴ *Id.*

1 she will usually sleep until 10:00 am, then spend an hour stretching or meditating,
2 and then for the next few hours will schedule appointments or do small errands.⁴⁵
3 She will have cereal for breakfast and will make dinner with her fiancé because
4 she cannot use a knife.⁴⁶ She said that she used to cry throughout the day because
5 she was frustrated doctors had not diagnosed her condition but no longer cries
6 daily.⁴⁷ She does not read or use computers because they trigger migraines.⁴⁸ She
7 stated that she can do most household chores, but cannot use her thumbs, and that
8 she showers only three times a week because heat causes headaches, and she no
9 longer gardens because of joint pain.⁴⁹

10 Plaintiff said that stress causes her headaches and that she used to get
11 counseling but was no longer in counseling because she thinks her issues are
12 physical.⁵⁰ She said she lives with her fiancé but her mother is moving closer to
13 help with her care.⁵¹ She said she has not scheduled her wedding because her
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16 ⁴⁵ AR 92-93.

17 ⁴⁶ AR 93.

18 ⁴⁷ *Id.*

19 ⁴⁸ *Id.*

20 ⁴⁹ AR 94.

21 ⁵⁰ AR 95.

22 ⁵¹ AR 96.

1 symptoms aren't controlled and it is hard to plan around that.⁵² She said that she
2 does not read or use computers because it triggers migraines.⁵³ She said that she
3 can't work from home because those jobs are mostly computer-based work.⁵⁴ She
4 said she also would not be able to work in a warehouse because of the noise,
5 lighting, and smells and the fact that it would require repetitive motions.⁵⁵
6 Plaintiff testified that headaches are not as painful as migraines and are on both
7 sides of her head.⁵⁶ She said she gets headaches about three weeks in a month and
8 gets migraines three to six times in a month.⁵⁷ She said that she has tried six
9 abortive medications but they did not work and that she has tried treatments
10 including physical therapy, acupuncture, massage, chiropractic, and craniosacral
11 therapy that did not work.⁵⁸ She can only drive for five miles or less because she
12 will faint at times or fall asleep due to her conditions.⁵⁹

15 ⁵² *Id.*

16 ⁵³ *Id.*

17 ⁵⁴ *Id.*

18 ⁵⁵ AR 97.

19 ⁵⁶ *Id.*

20 ⁵⁷ AR 97-98.

21 ⁵⁸ AR 98.

22 ⁵⁹ *Id.*

1 3. Medical Records

2 Because Plaintiff only challenges the ALJ's consideration of her subjective
3 complaints and the medical opinions as to physical conditions, the Court only cites
4 to relevant medical evidence regarding physical issues.

5 On January 19, 2018, Plaintiff presented to Kaylee English, DC.⁶⁰ Joint
6 restriction was noted in the cervical spine with right rotation and left lateral
7 flexion; in the thoracic spine with extension; in the lumbar spine with right
8 rotation at the L1-2 and L2-3 levels and with left rotation at the L4-5 level; and at
9 the left SI joint with flexion.⁶¹ Dr. English diagnosed segmental and somatic
10 dysfunction in the cervical, thoracic and lumbar spine; segmental and somatic
11 dysfunction in the pelvic region; segmental and somatic dysfunction of the upper
12 and lower extremities; pain in the left ankle; cervicalgia; and myalgia.⁶²
13 Dr. English opined that Plaintiff's prognosis was poor due to poor at-home
14 compliance, poor posture, poor biomechanics, and prolonged sitting.⁶³ On March
15 22, 2018, Plaintiff presented with reports that she felt good overall, with pain in
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19 ⁶⁰ AR 434.

20 ⁶¹ *Id.*

21 ⁶² *Id.*

22 ⁶³ AR 435.

1 her right hip and no migraines since her last visit.⁶⁴ Plaintiff's examination
2 yielded similar findings and her diagnoses were unchanged.⁶⁵

3 On September 5, 2018, Plaintiff presented to David Higginbotham, MD, for a
4 possible broken foot and to have ADA paperwork completed.⁶⁶ An X-ray revealed
5 fracture of the proximal PIP joint, which did not require casting but required that
6 Plaintiff wear a hard soled shoe.⁶⁷ Plaintiff also complained that her anxiety
7 disorder was worse in winter.⁶⁸ Dr. Higginbotham increased Plaintiff's dosage of
8 Alprazolam.⁶⁹

9 On June 3, 2019, Plaintiff presented to Tyler Chisholm, MD with complaints
10 of infection in her finger after being pricked with a rose.⁷⁰ She also requested a
11 referral for headaches and a psychiatrist and help filling out a disability form.⁷¹ On
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15 ⁶⁴ AR 437.

16 ⁶⁵ *Id.*

17 ⁶⁶ AR 448.

18 ⁶⁷ *Id.*

19 ⁶⁸ AR 449.

20 ⁶⁹ *Id.*

21 ⁷⁰ AR 559.

22 ⁷¹ *Id.*

1 examination, there was a nodule at the first PIP joint.⁷² Otherwise, Plaintiff's
2 examination was within normal limits and she ambulated well.⁷³

3 On July 1, 2019, Plaintiff presented to PA Amanda Price to establish care.⁷⁴
4 Plaintiff reported she was in good health and had no childhood illnesses.⁷⁵ Plaintiff
5 reported a rose thorn in her fingertip; neck pain of several years after falling from
6 a horse; PTSD resulting from childhood trauma; anxiety; depression well-controlled
7 on medication; 3-4 migraines a month, related to stress and hormones; exertional
8 compartment syndrome in her shins; and a phobia of needles.⁷⁶ On examination,
9 mood and affect were normal, she appeared well and in no distress and thought
10 and speech were congruent.⁷⁷ PA Price diagnosed migraine with aura, not
11 intractable; neck pain; PTSD, which PA Price declined to treat; a retained foreign
12 body; a severe phobia of needles.⁷⁸

13 On July 15, 2019, Plaintiff presented to Leonard Galloway, MPT, of Aegis
14 Physical Therapy for evaluation, reporting that several months earlier she had an
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16 ⁷² AR 560.

17 ⁷³ AR 562.

18 ⁷⁴ AR 565.

19 ⁷⁵ AR 566.

20 ⁷⁶ *Id.*

21 ⁷⁷ AR 569.

22 ⁷⁸ AR 570-571.

1 exacerbation of a prior neck injury and had pain radiating into her left arm to the
2 elbow.⁷⁹ Sensation was intact in all myotomes but trigger points were noted on
3 palpation in the sub-occipital, cervical paraspinal and upper trapezius regions.⁸⁰
4 Plaintiff complained that her decreased range of motion was limiting her daily
5 activities.⁸¹ Between 1996 and current date, she had been prescribed multiple
6 medications for mental health reasons.⁸²

7 On August 12, 2019, Plaintiff presented to PA Price for follow-up.⁸³ On
8 examination, she denied headache, was in no distress, and had all normal findings,
9 including normal mood and affect.⁸⁴

10 On August 21, 2019, Plaintiff presented to Stephen Davis, PT, of Lakeview
11 Spine Therapy for evaluation.⁸⁵ Plaintiff described long-standing neck pain which
12 is intermittent and can go as much as nine months without symptoms, as well as
13 three different types of headache symptoms with one being associated with neck
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16 ⁷⁹ AR 472.

17 ⁸⁰ AR 473.

18 ⁸¹ *Id.*

19 ⁸² *Id.*

20 ⁸³ AR 571.

21 ⁸⁴ AR 573.

22 ⁸⁵ AR 535.

1 tension.⁸⁶ On examination, Plaintiff had normal gait and posture, with limited
2 range of motion in the cervical and lumbar spine.⁸⁷ A week later, Plaintiff presented
3 to PT Davis for treatment of neck pain and he noted progress with treatment.⁸⁸ On
4 September 3, 2019, Plaintiff presented to PT Davis with midthoracic tightness due
5 to economic stress.⁸⁹ On September 5, 2019, Plaintiff presented to PT Davis with
6 left-sided muscle tension.⁹⁰ On September 10, 2019, Plaintiff presented to PT Davis
7 with a back of head and right frontal headache.⁹¹ PT Davis noted that after
8 treatment Plaintiff's left-sided neck tension subsided but her right headache
9 remained.⁹² On September 12, 2019, Plaintiff reported that she wakes at night
10 with deep ache in her neck.⁹³ On September 19, 2019, PT Davis noted left-sided
11 lateral neck pain with right-side bending.⁹⁴ On October 1, 2019, PT Davis noted
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14 ⁸⁶ Id.

15 ⁸⁷ Id.

16 ⁸⁸ AR 534.

17 ⁸⁹ AR 533.

18 ⁹⁰ AR 531.

19 ⁹¹ AR 530.

20 ⁹² Id.

21 ⁹³ AR 528.

22 ⁹⁴ AR 526.

1 stiffness in the right scapular.⁹⁵ On October 3, 2019, Plaintiff was seen for neck
2 pain.⁹⁶ On October 8, 2019, Plaintiff presented to PT Davis with neck pain.⁹⁷ PT
3 Davis noted that Plaintiff's range of motion had improved and her right and left
4 side were balanced in terms of symptoms.⁹⁸ On October 10, 2019, Plaintiff
5 presented to PT Davis, with suboccipital tightness.⁹⁹ PT Davis found that her
6 condition was improving.¹⁰⁰

7 On October 1, 2019, Plaintiff presented to PA Price with complaints of
8 diarrhea.¹⁰¹ She reported that she was going to physical therapy for her neck and
9 it was moderately helpful but asked for a different muscle relaxer.¹⁰² Plaintiff
10 denied headache and on examination she was in no distress and all findings were
11 within normal limits.¹⁰³

14 ⁹⁵ AR 525.

15 ⁹⁶ AR 524.

16 ⁹⁷ AR 523.

17 ⁹⁸ *Id.*

18 ⁹⁹ AR 522.

19 ¹⁰⁰ *Id.*

20 ¹⁰¹ AR 577.

21 ¹⁰² *Id.*

22 ¹⁰³ AR 578-579.

1 On November 13, 2019, Plaintiff presented to PA Price and reported that in
2 the past doctors had prescribed Vicoprofen but she could not find a doctor who
3 would prescribe both narcotic and benzodiazepine medication together and she
4 would like a referral to pain management.¹⁰⁴ Plaintiff reported that since stopping
5 physical therapy, her neck pain had worsened.¹⁰⁵ Plaintiff denied headache and on
6 examination she was in no distress and all findings were normal.¹⁰⁶ PA Price
7 started that an MRI had been negative and she did not feel comfortable prescribing
8 narcotics but referred Plaintiff to pain management.¹⁰⁷

9 On December 5, 2019, Plaintiff was examined by Lisa Kisenwether, ARNP,
10 at the request of the Commissioner.¹⁰⁸ Plaintiff's main complaints were chronic
11 PTSD; migraine without aura; cervical pain, chronic; panic disorder; external
12 compartment syndrome, lower leg, chronic bilaterally; asthma, stable on
13 medication; and depression, stable on medication.¹⁰⁹ Plaintiff described PTSD
14 which was increasing in severity; migraines that feel like a pick in the temple,
15 associated with light sensitivity, nausea and loss of consciousness; neck pain that
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17 ¹⁰⁴ AR 580.

18 ¹⁰⁵ *Id.*

19 ¹⁰⁶ AR 581-582.

20 ¹⁰⁷ AR 582-583.

21 ¹⁰⁸ AR 537.

22 ¹⁰⁹ AR 537.

1 is exacerbated by lifting, staying stationary, and reaching overhead; panic attacks;
2 and exertional compartment syndrome in her lower legs.¹¹⁰ She reported that she
3 could care for herself and her two dogs, but that she no longer does grocery
4 shopping, yard work, or horse riding.¹¹¹ On examination, Plaintiff was able to walk
5 without assistance, able to get on and off the exam table with no assistance or
6 difficulty, able to sit and rise without difficulty, able to tie and untie her shoes, able
7 to make a fist with both hands, able to touch her thumb to her fingers, able to pick
8 up a coin and able to use buttons and a zipper.¹¹² Her grip was normal.¹¹³ Plaintiff
9 was able to tandem walk, walk on heels and toes, hop, bend, squat, and stand on
10 one leg.¹¹⁴ Her finger-to-nose and heel-to-shin test was normal; station was normal,
11 gait was normal; Romberg test was negative; and she did not use an assistive
12 device.¹¹⁵ Plaintiff had negative straight-leg raising, normal range of motion and no
13 atrophy, spasm or joint deformity.¹¹⁶ Plaintiff had full strength in lower and upper
14 extremities; and range of motion was normal in the neck, back, shoulders, elbows,

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16 ¹¹⁰ AR 537-538.

17 ¹¹¹ AR 538-539.

18 ¹¹² AR 540.

19 ¹¹³ *Id.*

20 ¹¹⁴ AR 541.

21 ¹¹⁵ *Id.*

22 ¹¹⁶ *Id.*

1 wrists, thumbs, hips, knees, and ankles.¹¹⁷ Plaintiff's cardiovascular, respiratory,
2 and neurological systems were normal; and her abdomen was positive only for
3 tenderness in the right lower quadrant.¹¹⁸ There was muscle tenderness noted on
4 palpation of the spine but no trigger points.¹¹⁹ In the cervical spine, there was
5 straightening and loss of the lordotic curve, secondary to spasm and a slight 1-2mm
6 anterolisthesis of C4/C5.¹²⁰ ARNP Kisenwether diagnosed PTSD, chronic; migraine
7 without aura; cervical pain, chronic; panic disorder; external compartment
8 syndrome, lower leg, chronic/bilateral; asthma, stable with medication; and
9 depression, stable with medication.¹²¹ ARNP Kinsenkether opined that Plaintiff
10 can stand or walk for eight hours, sit for eight hours, and lift and carry ten pounds
11 frequently and twenty pounds occasionally. ¹²² She opined that Plaintiff had no
12 limitation in climbing, balancing, stooping, kneeling, crouching, and crawling.¹²³
13 She opined that Plaintiff could reach occasionally and should avoid exposure to
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16 ¹¹⁷ *Id.*

17 ¹¹⁸ *Id.*

18 ¹¹⁹ AR 542.

19 ¹²⁰ AR 542.

20 ¹²¹ *Id.*

21 ¹²² AR 542-543.

22 ¹²³ AR 543.

unprotected heights, heavy machinery, chemicals, gases, dusts, fumes. and
excessive noise.¹²⁴

On January 15, 2019, Plaintiff presented to PA Price.¹²⁵ PA Price wrote:

Patient is a 37-year-old female who presents to the clinic today for follow-up. Patient begins the appointment with a long list of symptoms and previous diagnosis that she would like to address. They are as follows: Chronic exertional compartment syndrome, bilateral bursitis, bilateral tendinitis in the knees, psychogenic nonepileptic seizures, panic disorders, selective mutism, separated ribs, severe in unknown cause of bruising, joint hypermobility, double vision, migraines, skin rash, bloating diarrhea, neck pain, dislocated shoulders bilaterally, thumb pain, tilted uterus, tailbone pain, sprained ankles, hip dislocation bilaterally, knees locking bilaterally, tooth resorption, "odd medication side effects", pes planus, bilateral stress fractures in both feet at 25 years old, difficulty holding pencil, low body temperature, low blood pressure, sensitivity to heat and cold, history of fainting, fatigue, idiopathic hypersomnia, wrist pain, chronic mild mid back pain, ankle sprain in hip dislocation at 12 years old, bedwetting until age 10 years old, intermittent hand tremor, frequent urination, "clumsy joints giving out", palpitations, PVCs, perioral dermatitis, ketosis pilaris.

Patient reports that she would like to be evaluated for Ehlers-Danlos syndrome. Patient does endorse a history of joint hypermobility. She states that she has velvety type skin on the inner parts of her arms. She endorses dry a her abdomen, likely secondary to pregnancy. She does endorse easy bruising. She reports that any time she cuts herself that she heals poorly. Patient has not had any lab work due to significant severe needle phobia. She denies history of varicose veins, history of heart murmur.^[AP.2]

PA Price noted that Plaintiff denied headache and was in no distress on examination with normal findings that included the fact that she had a negative thumb test, no hypermobility in the joints of her hands or elbows, and that knees could not be easily dislocated.¹²⁶ PA Price advised Plaintiff of the criteria for Ehlers-Danlos and noted that she highly suspected hypochondriasis, and considered that Plaintiff was applying for SSD.¹²⁷ PA Price noted that she refused to prescribe opioid pain medication and noted that Plaintiff was told she was not a

¹²⁴ *Id.*

¹²⁵ AR 584.

¹²⁶ AR 585-586.

¹²⁷ AR 586.

1 candidate for a pain management clinic because of her desire to take opioids as
2 necessary and not on a schedule.¹²⁸

3 On January 20, 2019, Plaintiff reported to PA Price for follow-up, requesting
4 referral for Ehlers-Danlos syndrome.¹²⁹ On examination, Plaintiff denied headache,
5 was in no distress, and all findings were within normal limits. PA Price noted that
6 she believed there was a “significant component for psychiatric care” and noted
7 that “I am concerned that she provides most of the history that is word for word
8 meeting diagnostic criteria of Ehlers-Danlos.”¹³⁰ PA Price noted further that she
9 was concerned that Plaintiff had brought a sheet in which she had marked every
10 subjective and objective finding positive before there was even an examination
11 performed, including unfounded medical diagnosis of mitral valve prolapse and
12 aortic root dilation, despite negative echocardiogram.¹³¹

13 On October 16, 2019, Plaintiff presented to Tony Lee, MD of Washington
14 Neurology.¹³² Plaintiff reported migraines of a 10/10 severity occurring 16+ times a
15 month and lasting 12 hours.¹³³ Plaintiff reported that she had tried multiple

17 ¹²⁸ AR 586-587.

18 ¹²⁹ AR 588.

19 ¹³⁰ AR 590.

20 ¹³¹ *Id.*

21 ¹³² AR 613.

22 ¹³³ *Id.*

1 medications including triptans, Topamax, tizanidine, soma, methocarbamol,
2 nortriptyline, Cymbalta, Gabapentin, and Lyrica, but that Vicodin worked.¹³⁴ On
3 examination, Plaintiff reported chest palpitations, shortness of breath, back pain,
4 anxiety, depression, and memory loss.¹³⁵ She was well-groomed; was oriented to
5 person, place, and time, and had normal behavior; had intact recent and remote
6 memory, attention span, and concentration; had full range of motion without pain
7 in the head and neck; had normal breathing; had normal cardiovascular findings;
8 had normal gait and station; had normal musculoskeletal findings; and had a
9 normal cranial nerve assessment.¹³⁶ Dr. Lee diagnosed Plaintiff with Migraine
10 with aura, not intractable, without migrainosus; post traumatic stress disorder,
11 chronic; major depressive disorder, recurrent severe without psychotic features,
12 and fear of injections or transfusions.¹³⁷

13 On November 15, 2019, Plaintiff reported to PT Davis that she had a
14 migraine the day prior and was tired.¹³⁸ On December 4, 2019, Plaintiff presented
15 to PT Ryan Sprunger and reported that she had neck pain at a 7/10 and that it
16
17

18 ¹³⁴ *Id.*

19 ¹³⁵ *Id.*

20 ¹³⁶ AR 614.

21 ¹³⁷ AR 614.

22 ¹³⁸ AR 633.

1 goes to a 10/10.¹³⁹ She said that used to shop at small stores but now has to shop at
2 Walmart or Costco due to financial concerns and has no friends nearby because she
3 recently moved.¹⁴⁰ She reported that she lost her job in 2016, and has not been able
4 to recover.¹⁴¹ On examination, she had normal gait and posture, had full mobility
5 to sit and rise and get on the exam table without assistance, and she was tender at
6 trigger points in the left scalenes and the right upper thoracic region.¹⁴² PT
7 Springer assessed Plaintiff with chronic neck pain associated by Plaintiff with
8 intermittent migraines triggered by anxiety, smells, lights, stress, or physical
9 exertion.¹⁴³ On December 10, 2019, Plaintiff presented to PT Sprunger.¹⁴⁴ She
10 reported having a migraine the day prior but had fully recovered.¹⁴⁵ On January 7,
11 2020, Plaintiff presented to PT Davis and reported that she had neck pain 50% of
12 the time and that it has improved but that since her migraine medication was not
13 refilled she now was having 4-6 migraines a month.¹⁴⁶ On January 14, 2020,

14
15 ¹³⁹ AR 618.

16 ¹⁴⁰ *Id.*

17 ¹⁴¹ *Id.*

18 ¹⁴² AR 619.

19 ¹⁴³ *Id.*

20 ¹⁴⁴ AR 616.

21 ¹⁴⁵ *Id.*

22 ¹⁴⁶ AR 631.

1 Plaintiff presented to PT Davis, reporting that she had hypermobility and
2 wondered if she had a connective tissue disorder.¹⁴⁷ She reported that her
3 migraines were more severe since her medication was not refilled.¹⁴⁸ On January
4 21, 2020, Plaintiff presented to PT Davis and complained that insurance would not
5 pay for adequate testing and her health was not being addressed.¹⁴⁹ On January
6 29, 2020, Plaintiff presented to PT Davis and reported that she remained
7 concerned that she had a connective tissue disorder like Ehlers-Danlos
8 Syndrome.¹⁵⁰ PT David notes left greater than right cervical tenderness with
9 improved relaxation and normal tone following treatment.¹⁵¹ He noted overall
10 hypermobility.¹⁵²

11 On January 31, 2020, Plaintiff presented to neurologist Ahusha Mannava,
12 MD, for evaluation of headaches.¹⁵³ Plaintiff reported headaches since age 5, and
13 then the onset of migraines in 2000 after she suffered a concussion.¹⁵⁴ Plaintiff
14

15 ¹⁴⁷ AR 629.

16 ¹⁴⁸ *Id.*

17 ¹⁴⁹ AR 625.

18 ¹⁵⁰ AR 623.

19 ¹⁵¹ *Id.*

20 ¹⁵² *Id.*

21 ¹⁵³ AR 746.

22 ¹⁵⁴ *Id.*

1 reported 31 headaches in a month with 20 severe headaches in a month.¹⁵⁵ They
2 are like a pick in the right temple; occasionally are accompanied by bright spots or
3 a couple hours, light and sound sensitivity, nausea, dizziness, fatigue, and neck
4 tenderness; and are triggered by smell, lights, alcohol, and foods.¹⁵⁶ She reported
5 they are relieved by hydrocodone and sumatriptan helps if taken early.¹⁵⁷ On
6 examination, Plaintiff was in no distress and systems were normal with the
7 exception of bilateral occipital tenderness and stiffness.¹⁵⁸ A detailed neurological
8 examination was normal.¹⁵⁹ Dr. Mannava diagnosed chronic migraine
9 headaches.¹⁶⁰

10 On February 27, 2020, Plaintiff presented to Brenna Hayes of Virginia Mason
11 Memoria Hospital for genetic counseling.¹⁶¹ Ms. Hayes ultimately opined that she
12 could not make a diagnosis and that genetic testing was recommended.¹⁶²

15 ¹⁵⁵ *Id.*

16 ¹⁵⁶ *Id.*

17 ¹⁵⁷ *Id.*

18 ¹⁵⁸ AR 748-749.

19 ¹⁵⁹ AR 749.

20 ¹⁶⁰ *Id.*

21 ¹⁶¹ AR 644-647.

22 ¹⁶² AR 647.

1 On April 27, 2020, Plaintiff had a follow-up appointment with Dr.
2 Mannava.¹⁶³ She refused a trail of Botox due to fear of injections.¹⁶⁴ Plaintiff
3 stopped taking one medication due to dizziness but reported that her migraine
4 frequency decreased from 3-4 a month to 2 per month in the last 2 months with
5 migraines lasting 4-5 days.¹⁶⁵ Plaintiff requested narcotic pain medication, which
6 Dr. Mannava refused to prescribe.¹⁶⁶ Plaintiff was in no distress and a detailed
7 neurological examination was normal.¹⁶⁷ Dr. Mannava diagnosed chronic migraine
8 and post traumatic headaches, intractable.¹⁶⁸ Dr. Mannava added Ubrelvy as a
9 medication.¹⁶⁹

10 On June 23, 2020, Plaintiff presented to Charle Bulfinch, DO, to establish
11 care.¹⁷⁰ Plaintiff reported a history of anxiety and depression, migraines treated in
12 the past by narcotics as necessary, and pain in multiple joints related to Ehlers-

15 ¹⁶³ AR 752.

16 ¹⁶⁴ *Id.*

17 ¹⁶⁵ *Id.*

18 ¹⁶⁶ *Id.*

19 ¹⁶⁷ AR 753.

20 ¹⁶⁸ *Id.*

21 ¹⁶⁹ *Id.*

22 ¹⁷⁰ AR 741.

1 Danlos.¹⁷¹ On examination, all findings were normal.¹⁷² Dr. Bulfinch diagnosed
2 Plaintiff with mild intermittent asthma; anxiety; Ehlers-Danlos syndrome, benign
3 hypermobile form; and migraine.¹⁷³

4 On August 17, 2020, Plaintiff presented to geneticist Susie Ball, MS DCGC,
5 for evaluation of Ehlers-Danlos syndrome.¹⁷⁴ On August 24, 2020, MS DCGC Ball
6 wrote a narrative letter explaining that she had performed testing on Plaintiff but
7 that because of the restrictions of seeing patients in person she could only verify
8 one of the three criteria necessary to diagnose Ehlers-Danlos syndrome and could
9 not make a diagnosis at that time, but would refer Plaintiff to a geneticist in
10 Oregon or allow her doctor Dr. Bulfinch to make a diagnosis.¹⁷⁵

11 On August 31, 2020, Plaintiff presented to Dr. Mannava for follow-up,
12 reporting that she had discontinued all her migraine medications and was getting
13 headaches daily with only 1-2 headache free days a month.¹⁷⁶ On examination,
14 Plaintiff was in no distress and all findings were normal.¹⁷⁷ Plaintiff requested a
15

16 ¹⁷¹ *Id.*

17 ¹⁷² *Id.*

18 ¹⁷³ *Id.*

19 ¹⁷⁴ AR 637-640.

20 ¹⁷⁵ AR 635-636.

21 ¹⁷⁶ AR 755-756.

22 ¹⁷⁷ AR 756.

1 Cefaly device but was advised that she could try one after a two month trial of
2 Memantine.¹⁷⁸

3 On October 7, 2020, Plaintiff presented to Dr. Bulfinch with an injury to her
4 right heel.¹⁷⁹ On examination, all systems were normal, and there was no
5 numbness or weakness of the foot, but there was tenderness on the posterior and
6 lateral aspect of the calcaneus.¹⁸⁰ Dr. Bulfinch noted that he wanted to discuss the
7 report of Susie Ball that Ehlers-Danlos syndrome was possibly a condition but had
8 not been diagnosed due to an inability to fully evaluate Plaintiff.¹⁸¹ An x-ray
9 showed no fracture and unremarkable soft tissue findings.¹⁸² A follow-up visit on
10 December 11, 2020, yielded similar results.¹⁸³

11 On January 11, 2021, Plaintiff presented to Jeffrey LeCheminant, DPM,
12 with continued pain in her right heel.¹⁸⁴ Dr. LeCheminant diagnosed Achilles
13 tendinitis and prescribed physical therapy, as rest was not helpful in healing.¹⁸⁵ At
14

15 ¹⁷⁸ *Id.*

16 ¹⁷⁹ AR 743-744.

17 ¹⁸⁰ *Id.*

18 ¹⁸¹ AR 743.

19 ¹⁸² AR 745.

20 ¹⁸³ AR 810.

21 ¹⁸⁴ AR 819.

22 ¹⁸⁵ *Id.*

1 a follow-up visit on April 19, 2021, with Dr. Bulfinch, Plaintiff reported that she
2 had taken physical therapy and was wearing a walking shoe but could still not
3 walk for prolonged periods.¹⁸⁶ Dr. Bulfinch prescribed hydrocodone-ibuprofen.¹⁸⁷

4 On April 27, 2021, Plaintiff presented to Dr. Bulfinch requesting medication
5 and a prescription for a parking pass, since she was now able to walk a quarter of a
6 mile.¹⁸⁸ Plaintiff advised that she only used the pain medication for migraines if
7 they lasted for more than 6 hours, and that was rare.¹⁸⁹ On July 20, 2021, Plaintiff
8 presented to Dr. Bulfinch with pain in her neck and foot.¹⁹⁰ Dr. Bulfinch noted that
9 an Ehlers-Danlos support group had suggested carbidopa-levidopa for spasms and
10 he thought it seemed reasonable to prescribe it at Plaintiff's request.¹⁹¹ He
11 prescribed cabidopa-levidopa, Cymbalta, and hydrocodone-ibuprofen.¹⁹²

12 On August 12, 2021, Plaintiff was examined by Anita Beck, MD, a specialist
13 in genetic testing.¹⁹³ Dr. Beck diagnosed a connective tissue disorder of unknown
14

15 ¹⁸⁶ AR 826.

16 ¹⁸⁷ AR 833.

17 ¹⁸⁸ AR 837.

18 ¹⁸⁹ *Id.*

19 ¹⁹⁰ AR 840.

20 ¹⁹¹ *Id.*

21 ¹⁹² *Id.*

22 ¹⁹³ AR 770.

1 etiology.¹⁹⁴ On examination, Dr. Beck noted that Plaintiff was distressed only when
2 discussing her connective tissue disorder.¹⁹⁵ Finding regarding Plaintiff's HEENT,
3 neck, thorax, respiratory system, cardiovascular system, abdomen, lymphatic
4 system, and back were all within normal limits.¹⁹⁶ Skin was noted to be soft but not
5 excessively stretchy, and on neurological examination it was noted there was pain
6 with movement but good strength.¹⁹⁷ A musculoskeletal examination revealed that
7 Plaintiff could touch her right thumb to her forearm but not her left; and she did
8 not have hyperextension in her knees or elbows but was able to touch her palms to
9 the ground.¹⁹⁸ Dr. Beck noted that this correlated to a Beighton score of 4/9.¹⁹⁹ Dr.
10 Beck noted that the closest diagnosis she could get to without genetic testing was
11 hypermobile Ehlers-Danlos Syndrome, but it was not a perfect fit, and she could
12 only diagnosis a connective tissue disorder of unknown etiology.²⁰⁰

13
14 ¹⁹⁴ *Id.*

15 ¹⁹⁵ AR 772.

16 ¹⁹⁶ AR 772-773.

17 ¹⁹⁷ AR 773.

18 ¹⁹⁸ *Id.*

19 ¹⁹⁹ *Id.* A Beighton Score is a test for joint hypermobility and a score of 4 or more on
20 a scale of 9 is considered positive. Cleveland Clinic, *Beighton Score*,
21 www.clevelandclinic.org (last seen March 26, 2024).

22 ²⁰⁰ AR 774-775.

1 On September 29, 2021, Plaintiff presented to Dr. Bulfinch with complaints
2 that she was out of breath and sleeping a lot.²⁰¹ She reported that carbidopa-
3 levidopa was helping with her Ehlers-Danlos Syndrome but stated that insurance
4 had denied her medication for hypersomnia.²⁰²

5 On November 30, 2021, Plaintiff presented to cardiologist Anindita
6 Chowdhury, MD, on referral from Dr. Bulfinch for mild intermittent asthma.²⁰³
7 Dr. Chowdhury noted that Plaintiff's main complaint was tiredness and noted
8 deconditioning.²⁰⁴ Dr. Chowdhury diagnosed chronic shortness of breath, Ehlers-
9 Danlos syndrome, obesity and tiredness, and counseled Plaintiff to lose weight and
10 exercise to reverse deconditioning.²⁰⁵ A chest x-ray was normal.²⁰⁶

11 On January 24, 2022, Plaintiff presented to Brenna Hayes for follow-up
12 genetic counseling.²⁰⁷ Ms. Hayes indicated that on August 18, 2020, Plaintiff was
13 seen by Anita Beck, MD, for a genetics medical consultation and that Dr. Beck
14
15

16 ²⁰¹ AR 850.

17 ²⁰² *Id.*

18 ²⁰³ AR 922.

19 ²⁰⁴ *Id.*

20 ²⁰⁵ AR 923-924.

21 ²⁰⁶ AR 925.

22 ²⁰⁷ AR 768.

1 recommended genetics testing.²⁰⁸ Ms. Hayes explained that the genetic testing was
2 completed and was negative, indicating that no genetic changes were found which
3 would explain Plaintiff's features.²⁰⁹ Ms. Hayes noted that the test could not rule
4 out Ehlers-Danlos but did not support it.²¹⁰

5 On February 8, 2022, Plaintiff presented to Dr. Mannava with reports that
6 in January she had pain in her right eye, with colors being off and possibly blurred
7 vision.²¹¹ Dr. Mannava ordered an MRI of the brain and referred Plaintiff to an
8 ophthalmologist.²¹²

9 On February 14, 2022, Plaintiff presented to Richard Ehlers, MD, for a
10 consultation for possible neuritis on Dr. Mannava's referral for possible neuritis
11 and was found to have possible retro bulbar optic neuritis.²¹³ On examination, all
12 findings were within normal limits.²¹⁴ On February 15, 2022, Plaintiff presented to
13 Dr. Bulfinch with paperwork for disability.²¹⁵

14
15 ²⁰⁸ *Id.*

16 ²⁰⁹ AR 768-769.

17 ²¹⁰ *Id.*

18 ²¹¹ AR 896-897.

19 ²¹² AR 897.

20 ²¹³ AR 792-793.

21 ²¹⁴ *Id.*

22 ²¹⁵ AR 876.

1 On March 16, 2022, Plaintiff presented to Dr. Bulfinch with complaints that
2 she had chest pain and felt a growth in her throat.²¹⁶ Dr. Bulfinch referred her to
3 an ENT.²¹⁷ An echocardiogram was normal.²¹⁸

4 On March 18, 2021, an MRI of the brain showed no sign of optic neuritis but
5 showed mild prominence of the fluid surrounding the optic nerve sheath, indicating
6 possible idiopathic intracranial hypertension.²¹⁹

7 On March 29, 2022, Plaintiff presented to Rick Gross, MD, with complaints
8 of a growth in her throat.²²⁰ Dr. Gross diagnosed a pharyngeal cyst and opined that
9 it should be excised but that a consultation would be needed due to Ehlers-Danlos
10 syndrome.²²¹ On March 30, 2022, Plaintiff called stating that she reconsidered
11 taking antibiotics and would like them prescribed.²²² On May 9, 2022, Plaintiff
12 returned and was seen by Aaron Shady, DO, who noted that the cyst had resolved
13 without intervention.²²³

14
15 ²¹⁶ AR 879.

16 ²¹⁷ AR 880.

17 ²¹⁸ AR 883-884.

18 ²¹⁹ AR 894.

19 ²²⁰ AR 916.

20 ²²¹ AR 917.

21 ²²² AR 919.

22 ²²³ AR 920.

1 On March 31, 2022, Plaintiff presented to Dr. Mannava for follow-up for
2 headaches.²²⁴ Dr. Mannava noted that in January 2022 Plaintiff had presented
3 with complaints of recent blurred vision, double vision, and difficulty
4 distinguishing colors but that an MRI of the brain had not shown evidence of optic
5 nerve injury or demyelinating disease.²²⁵ On examination, Plaintiff was in no
6 distress and all findings were within normal limits.²²⁶ On May 25, 2022, Plaintiff
7 presented to Dr. Mannava for follow-up.²²⁷ Plaintiff reported that after treatment
8 with Diamox she had a reduction in headaches and had 10 headache free days for
9 the two prior months, and had only 3-4 migraines per month.²²⁸

10 4. The ALJ's Findings

11 The ALJ found Plaintiff's statements concerning the intensity, persistence,
12 and limiting effects of her conditions to be only partially consistent with the
13 evidence for two reasons.²²⁹ She states that the first reason was that Plaintiff's
14 allegations were inconsistent with her activities of daily living.²³⁰ The ALJ

15
16 ²²⁴ AR 889.

17 ²²⁵ AR 890.

18 ²²⁶ AR 890-891.

19 ²²⁷ AR 935.

20 ²²⁸ AR 936.

21 ²²⁹ AR 26-33.

22 ²³⁰ AR 26.

1 articulated:

2 First, though the claimant alleged that she is unable to work, she
3 nevertheless is able to engage in many significant activities of daily
4 living. This leads the undersigned to believe that she is less limited
5 than alleged. Notably, in her Function Report – Adult (Ex. 3E) the
6 claimant reported that she is able to water her lawn, stretch, go on a
7 short walk, take a shower, do light chores, and help care for her pets;
8 perform her personal care activities with some problems; prepare
9 meals half of the time; do household chores, such as, laundry, light
10 cleaning, and vacuuming; go outside daily; drive a car and ride in a
11 car; go shopping in stores; pay bills, count change, handle a savings
12 account, and use a checkbook/money orders; and do hobbies, such as,
13 watch movies and read in small increments.²³¹

14 The ALJ then went on to note that Plaintiff had never been fired from a job
15 for failing to get along with others, had received unemployment benefits by
16 certifying that she was ready willing and able to work, and had reported that a year
17 ago she rode horses and was a sales director with 200 employees under her
18 direction.²³²

19 The ALJ also found that the Plaintiff's subjective complaints were
20 inconsistent with the objective evidence and clinical findings.²³³

21 5. Analysis

22 The Court will address the reasons given by the ALJ to find Plaintiff's
23 subjective complaints less than credible.

24 ²³¹ AR 26-27.

25 ²³² AR 27.

26 ²³³ *Id.*

1 a. The ALJ's consideration of Plaintiff's daily activities

2 Plaintiff argues that the ALJ took Plaintiff's daily activities out of context
3 when considering that they were inconsistent with allegations of total disability.
4 The Court agrees that the ALJ has not considered the record as a whole when
5 considering the activities cited by the ALJ. Plaintiff's primary disabling condition
6 is migraine headaches. None of the simple activities engaged in by Plaintiff
7 require heavy exertion and she testified that they were performed at times when
8 she was not suffering from a migraine headache and had modified such activities to
9 make them safe for her to perform, such as the fact that she did not drive for more
10 than short distances or use a knife when preparing foods.²³⁴ The ALJ erred in
11 considering sedentary activities as an indication Plaintiff could engage in greater
12 activities particularly in light of Dr. Chowdhury's finding that Plaintiff had
13 suffered from severe deconditioning as a result of her sedentary activities.²³⁵

14 The ALJ erred in considering that Plaintiff had not been fired for a job due
15 to difficulty getting along with others but ignoring the fact that Plaintiff had twice
16 been fired from employment due to taking excessive leave because of migraine
17 headaches.²³⁶

20 ²³⁴ AR 93, 98.

21 ²³⁵ AR 923-924.

22 ²³⁶ AR 87, 358.

1 The fact that Plaintiff had at one point directed 200 people and had been
2 able to ride horses was not a valid consideration for the ALJ to make. The record
3 clearly reflected that those activities has occurred prior to the alleged onset date,
4 when Plaintiff alleged a worsening in both the frequency and intensity of her
5 migraine headaches. Additionally, it was not proper for the ALJ to consider that
6 Plaintiff applied for unemployment when such benefits do not require an applicant
7 to assert that they are capable of working full-time, but only part-time.

8 *b. The ALJ's reasoning that Plaintiff's allegations are inconsistent*
9 *with the medical record.*

10 As is noted above, Plaintiff suffers from two separate conditions for which
11 she has alleged physical disability—migraine headaches and Ehlers-Danlos
12 syndrome. While her diagnosis of Ehlers-Danlos is relatively new and is equivocal
13 according to the medical opinion of Dr. Beck,²³⁷ there was no indication that
14 Plaintiff's allegations regarding the frequency or intensity of her migraine
15 headaches was in question. Objective medical evidence in the form of an MRI of
16 the brain established that Plaintiff suffered from idiopathic intracranial
17 hypertension, which Dr. Mannava opined to be the source of Plaintiff's migraine
18 headaches.²³⁸ Indeed, the medical record supports that Plaintiff reported to
19 medical providers that she suffered up to 20 migraine headaches in a month and,
20

21 ²³⁷ AR 768-769.

22 ²³⁸ AR 894, 936.

1 that at its best level of control, Plaintiff suffered at least 3 migraine headaches a
2 month.²³⁹

3 6. Summary

4 Because the ALJ did not give good reasons for discounting Plaintiff's
5 symptom reports about her headaches, a remand is warranted.

6 **B. Medical Opinion: Plaintiff establishes consequential error**

7 Plaintiff argues the ALJ erred in her evaluation of the medical opinions.²⁴⁰
8 Specifically, Plaintiff first argues that the ALJ erred in finding the opinions of
9 Dr. Mannava and Dr. Bulfinch to be not persuasive and instead relying on the
10 opinions of the non-examining state agency evaluators. The Commissioner argues
11 that Dr. Mannava did not provide a medical opinion and that Dr. Bulfinch's
12 medical opinion was lacking in supportability and consistency.

13 1. Standard

14 The ALJ was required to consider and evaluate the persuasiveness of the
15 medical opinions and prior administrative medical findings.²⁴¹ The factors for
16

17 ²³⁹ AR 936.

18 ²⁴⁰ An ALJ must consider and articulate how persuasive she found each medical
19 opinion, including whether the medical opinion was consistent with and supported
20 by the record. 20 C.F.R. § 404.1520c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792
21 (9th Cir. 2022).

22 ²⁴¹ 20 C.F.R. § 404.1520c(a), (b).

1 evaluating the persuasiveness of medical opinions and prior administrative
2 medical findings include, but are not limited to, supportability, consistency,
3 relationship with the claimant, and specialization.²⁴² Supportability and
4 consistency are the most important factors,²⁴³ and the ALJ must explain how she
5 considered the supportability and consistency factors when reviewing the medical
6 opinions and support her explanation with substantial evidence.²⁴⁴ The ALJ may
7 consider, but is not required to discuss the following additional factors: the source's
8 relationship to Plaintiff such as length of the treatment, purpose of the treatment
9 relation and whether the source examined Plaintiff, as well as whether the source
10 had advanced training or experience to specialize in the area of medicine in which
11 the opinion was being given.²⁴⁵

12 A medical opinion is statement from a medical source about what an
13 individual can still do despite her limitations or restrictions in the abilities to do
14 the following: perform the physical demands of work activities such as standing,
15

16 ²⁴² 20 C.F.R. § 404.1520c(c)(1)–(5).

17 ²⁴³ *Id.* § 404.1520c(b)(2).

18 ²⁴⁴ *Id.* § 404.1520c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785 (“The agency must
19 articulate . . . how persuasive it finds all of the medical opinions from each doctor
20 or other source and explain how it considered the supportability and consistency
21 factors in reaching these findings.”) (cleaned up).

22 ²⁴⁵ *Id.*

1 walking, sitting, lifting, carrying, pushing, pulling, and performing manipulative or
2 postural functions; perform the mental demands of work activities such as
3 understanding, remembering, maintaining concentration, persistence, and pace;
4 interacting appropriately with others, and dealing with stress; performing other
5 demands such as seeing, hearing, and using other senses; and the ability to adapt
6 to environmental conditions such as temperature extremes.²⁴⁶

7 2. Plaintiff's Testimony

8 The Court hereby incorporates and refers to the Plaintiff testimony
9 summarized above in its analysis of the prior issue.

10 3. Relevant Medical Records

11 The Court hereby incorporates and refers to the relevant medical records
12 summarized above in its analysis of the prior issue.

13 4. Analysis

14 a. *The ALJ's consideration of Dr. Mannava's opinions regarding*
15 *Plaintiff's environmental limitations*

16 Dr. Mannava treated Plaintiff for her migraine headaches and has,
17 according to the medical record, been successful in reducing the frequency and
18 intensity of her migraines.²⁴⁷ Dr. Mannava's treatment of Plaintiff began on
19 January 31, 2020, and continued throughout the relevant period.

21 ²⁴⁶ 20 C.F.R. § 404.1513.

22 ²⁴⁷ AR 936.

1 On February 21, 2022, Dr. Mannava completed a questionnaire.²⁴⁸ She said
2 that Plaintiff had a diagnosis of chronic migraine which she diagnosed based on
3 notes from medical treatment with a neurologist since January 31, 2020.²⁴⁹
4 Dr. Mannava stated that the headaches met the criteria of chronic migraine and
5 that her evaluation supports the diagnosis because of examination findings and
6 failed treatment with prior medication, as well as sensitivity to light.²⁵⁰
7 Dr. Mannava opined that Plaintiff's function might be limited because lights, noise,
8 movement, and exertion may trigger or worsen headaches.²⁵¹

9 The Court notes that the Commissioner errs in asserting that Dr. Mannava's
10 statements do not constitute a medical opinion. Dr. Mannava noted specifically
11 that Plaintiff has "significant problems due to light sensitivity and pain" and noted
12 that "function" was limited "as lights, noise and movement/exertion may trigger or
13 worsen headaches."²⁵² This constitutes a medical opinion, as Dr. Mannava was
14 clearly rendering a statement regarding Plaintiff's ability to function in
15 environmental conditions.²⁵³

16
17 ²⁴⁸ AR 758-759.

18 ²⁴⁹ AR 758.

19 ²⁵⁰ *Id.*

20 ²⁵¹ *Id.*

21 ²⁵² *Id.*

22 ²⁵³ *See* 20 C.F.R. § 404.1513.

1 The ALJ's reasoning is flawed for two reasons. First, the ALJ did not
2 properly consider that Dr. Mannava clearly explained her diagnosis and the fact
3 that she based it upon her own examinations as well as those of the neurologist,
4 Dr. Lee. Additionally, there was little if any analysis as to the supportability of
5 Dr. Mannava's opinions. Moreover, the ALJ failed to consider that Dr. Mannava's
6 opinion was overwhelmingly consistent with and supported by the objective
7 findings in the medical record and the finding of Plaintiff's neurologist.

8 The records indicate that Plaintiff's function improved following her
9 treatment with medication following a brain MRI indicating intracranial
10 hypertension. A claimant's improvement with treatment is "an important indicator
11 of the intensity and persistence of . . . symptoms."²⁵⁴ Symptom improvement,
12 however, must be weighed within the context of an "overall diagnostic picture."²⁵⁵
13 Here, the record indicates that even after treatment with more effective
14
15

16 ²⁵⁴ 20 C.F.R. § 404.1529(c)(3). *See Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d
17 1001, 1006 (9th Cir. 2006) ("Impairments that can be controlled effectively with
18 medication are not disabling for the purpose of determining eligibility for SSI
19 benefits.").

20 ²⁵⁵ *Holohan v. Massanari*, 246 F.3d1195, 1205 (9th Cir. 2001); *see also Lester v.*
21 *Chater*, 81 F.3d 821, 833 (9th Cir. 1995) ("Occasional symptom-free periods ... are
22 not inconsistent with disability.").

1 medication, Plaintiff still experienced at least three to four migraine headaches a
2 month and there is no indication that lights and noise are no longer a trigger.

3 The ALJ erred by failing to consider both Plaintiff's symptom reports and
4 Dr. Mannava's opinions regarding Plaintiff's "significant" sensitivity to lights.

5 While the ALJ provided for a limitation in the RFC to a work environment that
6 was quiet, and characterized as office level, it made no provision limiting lights, or
7 the use of computer screens. This is error.

8 The Court concludes that remand is warranted for the ALJ to properly
9 consider the opinion evidence and to evaluate the record as a whole.

10 *b. The ALJ's consideration of Dr. Bulfinch's opinions*

11 On February 15, 2022, Dr. Bulfinch completed a medical questionnaire and
12 noted that he diagnosed Plaintiff with Ehlers-Danlos syndrome and migraines
13 based on her subjective reports and the fact that she saw a genetics counselor in
14 the past.²⁵⁶ When asked about the objective findings supporting his diagnosis,
15 Dr. Bulfinch stated that Plaintiff's skin was a little stretchy and that there are no
16 objective findings for migraines.²⁵⁷ Dr. Bulfinch stated that Plaintiff would have a
17 decreased ability to use electric screens and decreased exercise tolerance.²⁵⁸
18 Dr. Bulfinch competed a Medical Report Form as well, which he stated that
19

20 ²⁵⁶ AR 760.

21 ²⁵⁷ *Id.*

22 ²⁵⁸ *Id.*

1 Plaintiff was diagnosed with migraines and Ehlers-Danlos.²⁵⁹ He opined that
2 Plaintiff could sit for 30 minutes at a time and a total of 4 hours; could stand for 15
3 minutes and stand or walk for a total of less than 2 hours; would need to take 4
4 breaks a day of 30 minutes to 2 hours; would require a job that allowed alternating
5 between standing and sitting at will; and would be absent for more than 4 days
6 month.²⁶⁰ He opined that Plaintiff's symptoms would frequently interfere with
7 attention and concentration; that she could occasionally carry less than ten pounds
8 and could rarely carry ten pounds.²⁶¹ He opined that Plaintiff could never do the
9 following: bending, stooping, squatting, crouching, kneeling, and crawling.²⁶² He
10 also opined that Plaintiff could rarely climb stairs, reach above the shoulders, or
11 reach to floor level; and could occasionally handle and finger or reach to waist
12 level.²⁶³ He opined that Plaintiff's impairments began in 2014 and were chronic,
13 that she was not a malingerer, and that she could perform her past work with
14 accommodations and other work that met the restrictions.²⁶⁴

17 ²⁵⁹ AR 761-762.

18 ²⁶⁰ AR 761.

19 ²⁶¹ AR 762.

20 ²⁶² *Id.*

21 ²⁶³ *Id.*

22 ²⁶⁴ *Id.*

1 Dr. Bulfinch's opinions were not accompanied by the same explanation
2 provided by Dr. Mannava. The sole explanation of his diagnosis that Plaintiff's
3 skin was a little stretchy is of itself not sufficient to explain the basis of his opinion.
4 Moreover, Dr. Bulfinch's opinions were inconsistent with the record as a whole.

5 It is notable that Dr. Bulfinch initially based his diagnosis of Ehler's-Danlos
6 syndrome on nothing more than Plaintiff's subjective reports.²⁶⁵ Ms. Ball, Dr.
7 Beck, and Ms. Hayes all declined to diagnose Ehler's Danlos syndrome.²⁶⁶ Both PA
8 Price and Dr. Beck found that there was no evidence of hypermobility in Plaintiff's
9 joints.²⁶⁷

10 The Court concludes that Plaintiff's arguments as to the ALJ's finding that
11 Dr. Bulfinch's opinions were lacking in supportability and consistency is without
12 merit. Additionally, to the extent that the Court has remanded the case for
13 consideration of Dr. Mannava's opinions, the ALJ is required to reconsider the
14 medical opinions in general.

15 5. Summary

16 Because the ALJ did not give good reasons for her evaluation of the medical
17 opinions of Dr. Mannava, a remand is warranted.

20 ²⁶⁵ AR 741.

21 ²⁶⁶ AR 635-636, 647,774-775.

22 ²⁶⁷ AR 585-586, 773.

1 **C. Step Five: The Court Finds the Issue Moot**

2 Plaintiff argues the ALJ erred at step five. As discussed above, the ALJ
3 failed to properly evaluate Plaintiff's subjective complaints and the medical
4 opinions of Dr. Mannava. Because the ALJ will be require to reevaluate the
5 medical evidence and all testimony on remand, the Court finds this issue to be
6 moot.

7 **D. Remand for Further Proceedings**

8 Plaintiff submits a remand for payment of benefits is warranted. The
9 decision whether to remand a case for additional evidence, or simply to award
10 benefits, is within the discretion of the court.”²⁶⁸ When the court reverses an ALJ's
11 decision for error, the court “ordinarily must remand to the agency for further
12 proceedings.”²⁶⁹

17 ²⁶⁸ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
18 761 F.2d 530 (9th Cir. 1985)).

19 ²⁶⁹ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595
20 (“[T]he proper course, except in rare circumstances, is to remand to the agency for
21 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,
22 775 F.3d 1090, 1099 (9th Cir. 2014).

1 **IV. Conclusion**

2 Plaintiff establishes the ALJ erred. On remand, the ALJ is to develop the
3 record and reevaluate—with meaningful articulation and evidentiary support—the
4 sequential process.

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. The ALJ's nondisability decision is **REVERSED**, and this matter is
7 **REMANDED** to the Commissioner of Social Security for further
8 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
9 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 8 and**
10 **13**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

11 IT IS SO ORDERED. The Clerk's Office is directed to file this order and
12 provide copies to all counsel.

13 DATED this 10th day of April, 2024.

14 

15

EDWARD F. SHEA
16 Senior United States District Judge
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